

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

IN RE PHARMACEUTICAL INDUSTRY AVERAGE) MDL NO. 1456
WHOLESALE PRICE LITIGATION) C.A. No. 01-CV-12257 (PBS)
)
THIS DOCUMENT RELATES TO:) HON. PATTI B. SARIS
)
)
COUNTY OF SUFFOLK,)
)
)
Plaintiff,)
)
)
v.)
)
)
ABBOTT LABORATORIES, INC., *et al.*)
)
)
Defendants.)
)

**RESPONSE OF DEFENDANTS TO
THE COURT'S ORDER OF JULY 30, 2004**

The Court's Order of July 30, 2004 directs “[a]ll Defendants in the Suffolk County Amended Complaint . . . to produce a copy of all actual Rebate Agreements for New York State beginning in 1993.”

The Suffolk County Amended Complaint alleges injuries to Suffolk County stemming from the fact that the county is “required by New York State law to contribute 25% towards its Medicaid costs.” (Am. Compl. ¶ 1.) We understand that the only rebate agreements concerning the Medicaid program that any of the defendants has entered into are Rebate Agreements with the United States Secretary of Health and Human Services (“HHS”), which are specifically referenced in the Amended Complaint. (Am. Compl. ¶ 358.) Defendants have collected the actual Medicaid Rebate Agreements entered into by each of the defendants and its predecessors, subsidiaries, divisions or affiliates with HHS covering the period since the beginning of 1993,

some of which date from before 1993. Due to the volume of the agreements, the defendants are filing three binders containing those agreements with the Court via traditional, non-electronic means, with a copy to counsel for Suffolk County. An index listing the agreements contained in those binders is attached to this Response as Exhibit A.

Many of the defendants have also entered into rebate agreements with New York State or its agencies involving programs other than Medicaid. For example, many defendants are parties to agreements relating to New York's Elderly Pharmaceutical Insurance Program (EPIC) and its Home Relief Medical Assistance Program. Because these programs are not the subject of the Suffolk County Amended Complaint, they do not appear to the defendants to be responsive to the Court's Order.

Those defendants that have not yet been served wish to state that they do not, by producing documents in response to the Court's order, waive their defenses with respect to service of process.

Dated: August 13, 2004

Respectfully submitted,

ON BEHALF OF ALL DEFENDANTS NAMED IN THE
SUFFOLK COUNTY AMENDED COMPLAINT

By: /s/ Lucy Fowler

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CERTIFICATE OF SERVICE

I certify that on August 13, 2004, a true and correct copy of the foregoing Response of Defendants was served on all counsel of record by electronic service pursuant to Paragraph 11 of Case Management Order No. 2 by sending a copy to Verilaw Technologies for posting and notification to all parties, and that three volumes of binders containing the Rebate Agreements were served on counsel for Suffolk County by Federal Express.

/s/ Lucy Fowler

Lucy Fowler

EXHIBIT A
TO RESPONSE OF DEFENDANTS
TO THE COURT'S ORDER OF JULY 30, 2004

**Index to Three Binders of Rebate Agreements
Being Filed Separately With the Court**

<u>Name of Defendant</u>	<u>Binder Tab</u>
Abbott Laboratories, Inc.	1
Amgen Inc.	2
AstraZeneca Pharmaceuticals LP	3
Aventis Pharmaceuticals, Inc.	4
Barr Laboratories, Inc.	5
Bayer Corporation	6
Berlex Laboratories, Inc.	7
Biogen, Inc.	8
Bristol-Myers Squibb Company	9
Eli Lilly and Company	10
Forest Pharmaceuticals, Inc.	11
Fujisawa Healthcare, Inc.	12
Genentech, Inc.	13
GlaxoSmithKline	14
Ivax Corporation and Ivax Pharmaceuticals, Inc.	15
Johnson & Johnson	16
MedImmune, Inc.	17
Merck & Co., Inc.	18

Novartis Pharmaceuticals Corporation	19
Pfizer Inc.	20
Pharmacia Corporation	21
Purdue Pharma, L.P.	22
Reliant Pharmaceuticals	23
Sanofi-Synthelabo, Inc.	24
Schering-Plough Corp.	25
Warrick Pharmaceuticals Corporation	
TAP Pharmaceutical Products, Inc.	26
Wyeth	27